

INTRODUCTION TO THE 2014 REGULATORY PLAN

Executive Order 12866, issued in 1993, requires the production of a Unified Regulatory Agenda and Regulatory Plan. Executive Order 13563, issued in 2011, reaffirmed the requirements of Executive Order 12866.

Consistent with these Executive Orders, the Office of Information and Regulatory Affairs is providing the 2014 Unified Regulatory Agenda (Agenda) and the Regulatory Plan (Plan) for public review. The Agenda and Plan are preliminary statements of regulatory and deregulatory policies and priorities under consideration. The Agenda and Plan include “active rulemakings” that agencies could possibly conclude over the next year. As in previous years, however, this list may also include some rules that agencies will not end up issuing in the coming year.

The Plan provides a list of important regulatory actions that agencies are considering for issuance in proposed or final form during the 2015 fiscal year. In contrast, the Agenda is a more inclusive list, including numerous ministerial actions and routine rulemakings, as well as long-term initiatives that agencies do not plan to complete in the coming year but on which they are actively working.

A central purpose of the Agenda is to involve the public, including State, local, and tribal officials, in federal regulatory planning. The public examination of the Agenda and Plan will facilitate public participation in a regulatory system that, in the words of Executive Order 13563, protects “public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.” We emphasize that rules listed on the Agenda must still undergo significant development and review before they are issued. No regulatory action can become effective until it has gone through the legally required processes, which generally include public notice and comment. Any proposed or final action must also satisfy the requirements of relevant statutes, Executive Orders, and Presidential Memoranda. Those requirements, public comments, and new information may or may not lead an agency to go forward with an action that is currently under contemplation.

Among other information, the Agenda also provides an initial classification of whether a rulemaking is “significant” or “economically significant” under the terms of Executive Orders 12866 and 13563. Whether a regulation is listed on the Agenda as “economically significant” within the meaning of Executive Order 12866 (generally, having an annual effect on the economy of \$100 million or more) does not necessarily indicate whether it imposes high costs on the private sector. Economically significant actions may impose small costs or even no costs. Regulations may count as economically significant because they confer large benefits or remove significant burdens. For example, the Department of Health and Human Services issues regulations on an annual basis, pursuant to statute, to govern annual changes in Medicare payments. These payment regulations effectively authorize transfers of billions of dollars to hospitals and other health care providers each year. Regulations might therefore count as economically significant not because they impose significant regulatory costs on the private sector, but because they involve transfer payments as required or authorized by law.

E.O.s 13563 and 13610: The Retrospective Review of Regulation

Executive Order 13563 reaffirms the principles, structures, and definitions in Executive Order 12866, which has long governed regulatory review. Executive Order 13563 explicitly points to the need for predictability and certainty, as well as for use of the least burdensome means to achieving regulatory ends. These Executive Orders include the requirement that, to the extent permitted by law, agencies should not proceed with rulemaking in the absence of a reasoned determination that the benefits justify the costs; they establish public participation, integration and innovation, flexible approaches, scientific integrity, and retrospective review as areas of emphasis in regulation. In particular, Executive Order 13563 explicitly draws attention to the need to measure and to improve "the actual results of regulatory requirements" - a clear reference to the importance of retrospective evaluation.

Executive Order 13563 addresses new regulations that are under development as well as retrospective review of existing regulations that are already in place. With respect to agencies' review of existing regulations, the Executive Order calls for careful reassessment based on empirical analysis. The prospective analysis required by Executive Order 13563 may depend on a degree of prediction and speculation about a rule's likely impacts, and the actual costs and benefits of a regulation may be lower or higher than what was anticipated when the rule was originally developed.

Executive Order 13610, *Identifying and Reducing Regulatory Burdens*, issued in 2012, institutionalizes the retrospective or lookback mechanism set out in Executive Order 13563 by requiring agencies to report to OMB and the public twice each year (January and July) on the status of their retrospective review efforts, to "describe progress, anticipated accomplishments, and proposed timelines for relevant actions."

Executive Orders 13563 and 13610 recognize that circumstances may change in a way that requires reconsideration of regulatory requirements. Lookback analysis allows agencies to reevaluate existing rules and to streamline, modify, or eliminate those regulations that do not make sense in their current form. The agencies' lookback efforts so far during this Administration have yielded nearly \$20 billion in near term savings for the American public, with significantly more to come.

The Administration is continuing to work with agencies to institutionalize retrospective review so that agencies regularly review existing rules on the books to ensure they remain effective, cost-justified, and based on the best available science. By institutionalizing retrospective review of regulations, the Administration will continue to examine what is working and what is not, and eliminate unjustified and outdated regulations.

Regulatory lookback is an ongoing exercise, and continues to be a high priority for the Administration. As part of that prioritization, the Administration requires that agencies regularly report about recent progress and coming initiatives. In accordance with Executive Order 13610 and Executive Order 13563, in July 2014, agencies submitted to OIRA the latest updates of their retrospective review plans. Federal agencies will again update their retrospective review plans this winter. We have also asked agencies to continue to emphasize regulatory lookbacks in their latest Regulatory Plans.

Reflecting that focus, the current agenda lists 83 rules that are characterized as retroactively reviewing existing programs. Below are some examples of agency plans to reevaluate current practices, in accordance with Executive Orders 13563 and 13610:

- The Department of Health and Human Services (HHS) is working on a rule to revise the requirements that Long-Term Care facilities must meet to participate in the Medicare and Medicaid programs. These proposed changes are necessary to reflect the substantial advances that have been made over the past several years in the theory and practice of service delivery and safety. These proposals are also an integral part of HHS's efforts to achieve broad-based improvements both in the quality of health care furnished through Federal programs, and in patient safety, while at the same time reducing procedural burdens on providers.
- The Department of Housing and Urban Development (HUD) is working on a final rule to streamline the inspection and home warranty requirements for Federal Housing Administration (FHA) single family mortgage insurance and, in doing so, would increase choice and lower the costs for FHA borrowers. First, HUD would remove regulations that require the use of an inspector from the FHA Inspector Roster as a condition for FHA mortgage insurance. This change is based on the recognition of the sufficiency and quality of inspections carried out by local jurisdictions, and HUD expects the rule will increase competition and choice of inspectors among lenders. Second, this rule would also remove the regulations requiring homeowners to purchase 10-year protection plans from FHA-approved warranty issuers in order to qualify for high loan-to-value FHA-insured mortgages. This change is based on the increased quality of construction materials and the standardization of building codes and building code enforcement, and HUD expects the rule will reduce burden on homeowners that do not want to purchase warranties and increase choice for the homeowners that still want to purchase warranties. In total, HUD estimates up to \$29 million in warranty expenditures avoided, \$100,000 in paperwork burden savings for the public, and \$50,000 in administrative cost savings for HUD.
- The Department of Labor is working to revise existing Sex Discrimination Guidelines, which have not been substantively updated since 1973, and to replace them with regulations that align with current law and legal principles in order to address their application to current workplace practices and issues.

E.O. 13609: International Regulatory Cooperation

In addition to using regulatory lookback as a tool to make our regulatory system more efficient, the Administration has been focused on promoting international regulatory cooperation. International regulatory cooperation supports economic growth, job creation, innovation, trade and investment, while also protecting public health, safety, and welfare. In May 2012 President Obama issued Executive Order 13609, *Promoting International Regulatory Cooperation*, which emphasizes the importance of these efforts as a key tool for eliminating unnecessary

differences in regulation between the United States and its major trading partners. Additionally, as part of the regulatory lookback initiative, Executive Order 13609 requires agencies to "consider reforms to existing significant regulations that address unnecessary differences in regulatory requirements between the United States and its major trading partners...when stakeholders provide adequate information to the agency establishing that the differences are unnecessary."

Executive Order 13609 also directed agencies to submit a Regulatory Plan that includes "a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, with an explanation of how these activities advance the purposes of Executive Order 13563," and Executive Order 13609. Further, Executive Order 13609 requires agencies to "ensure that significant regulations that the agency identifies as having significant international impacts are designated as such" in the Regulatory Agenda.

In furtherance of this focus on international regulatory cooperation, this summer, the Administration and Canada released the U.S.-Canada Regulatory Cooperation Council (RCC) Joint Forward Plan.¹ The Forward Plan represents a significant pivot point for the Administration's regulatory cooperation relationships with Canada, and outlines new Federal agency-level partnership arrangements to help institutionalize the way our regulators work together. The Forward Plan will help remove duplicative requirements, develop common standards, and identify potential areas where future regulation may unnecessarily differ. This kind of international cooperation on regulations between the United States and Canada will help eliminate barriers to doing business in the United States or with U.S. companies, grow the economy, and create jobs. The Forward Plan identifies 24 areas of cooperation where the United States and Canada will work together to implement over the next three to five years in order to modernize our thinking around international regulatory cooperation and develop a toolbox of strategies to address international regulatory issues as they arise. We expect that future Agendas will reflect strong evidence of this partnership.

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The Administration continues to foster a regulatory system that emphasizes that careful consideration of costs and benefits, public participation, integration and innovation, flexible approaches, and science. These requirements are meant to produce a regulatory system that draws on recent learning, that is driven by evidence, and that is suited to the distinctive circumstances of the twenty-first century.

¹ Available at: <http://www.whitehouse.gov/sites/default/files/omb/oira/irc/us-canada-rcc-joint-forward-plan.pdf>.